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VIA ECF

October 3, 2019

Hon. Vince Chhabria
United States District Court Judge
United States District Court, Northern District of California
San Francisco Courthouse
Courtroom 4 – 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*,
No 3:18-md-02843-VC

Dear Judge Chhabria:

In accordance with Your Honor's Civil Standing Order, Plaintiffs and Defendant Facebook, Inc. ("Facebook") jointly submit this letter to resolve the following dispute regarding Plaintiffs' request that Facebook agree to a Rule 26(f) meet and confer deadline of October 5, 2019. After meeting and conferring in good faith, the parties have been unable to resolve the issue submitted herein.

I. Plaintiffs' Position

Following the Court's September 9, 2019 decision on the motion to dismiss, on September 16, 2019, Plaintiffs sent Facebook a letter providing dates upon which Plaintiffs were available to meet and confer in advance of the Case Management Conference, then scheduled for October 1, 2019, and attaching a draft joint Case Management Statement for review and discussion. The letter set forth topics for discussion, including matters identified in the CMC statement; Plaintiffs' request that Facebook continue ESI discussions previously begun but not completed; and the scope of discovery in the case, including whether Facebook will agree to produce documents relating to the claims sustained by the court already collected and produced to government regulators. Facebook initially agreed to meet and confer on September 20, 2019, but cancelled the session after Your Honor's order rescheduling the Case Management Conference at Facebook's request to October 15, 2019.

Facebook then sought a continuance of the initial CMC from October 15, and Plaintiffs agreed again as a professional courtesy. However, contrary to Rule 26(f)(1) requiring the parties

to meet and confer 21 days in advance of a scheduling conference, Facebook has declined to agree to any meet and confer sessions on any topic, and on September 29, 2019 informed Plaintiffs and the Court of its position that any Rule 26(f) meet and confer deadline is premature in advance of the Case Management Conference—which now will not take place until November 4, 2019.

Facebook's refusal to meet and confer pursuant to Rule 26(f) has essentially stymied Plaintiffs from issuing discovery for an additional month (from the originally scheduled meet and confer on September 20th, to sometime after November 4th). Plaintiffs believe that the parties should use this valuable time to begin the discovery process and request that the Court enter a Rule 26(f) meet and confer deadline of October 5, 2019 or in any event sufficiently prior to the deadline for the CMC statement so that the parties can prepare a meaningful case management conference statement and refine any other issues to raise with the court on November 4, 2019.

II. Defendant's Position

This Court's order on Facebook's Motion to Dismiss set a case management conference ("CMC") for October 1, 2019, and ordered the parties to file a joint case management statement in advance of the CMC. The Court did not lift the discovery stay that is presently in place, nor did it order the parties to conduct a Rule 26(f) conference. As Facebook understands this Court's order, the CMC will provide an opportunity for the parties and the Court to discuss the most efficient and effective path forward for this litigation in light of the Court's ruling, which has narrowed the case in various ways. *See* Dkt. 298 at 42-43 ("The deadline for Facebook to file an answer to the complaint, along with all other scheduling matters, will be discussed at a case management conference.").

Facebook immediately agreed to meet and confer with Plaintiffs for the purpose of developing their joint case management statement, but requested that the parties jointly ask to reschedule the conference to October 4, in light of the Rosh Hashanah holiday. In response to the parties' joint request, the Court rescheduled the conference to October 15, which unfortunately presented an irreconcilable conflict for Facebook's lead counsel. The conference was then rescheduled once again, for the next available court date, November 4.

Contrary to Plaintiffs' assertion, Facebook has not "refus[ed] to meet and confer pursuant to Rule 26(f)" because the parties were not ordered to conduct a Rule 26(f) conference. Nor did the postponement of the conference from October 1 to November 4 "stymie[] Plaintiffs from issuing discovery" because the discovery stay remains in place.

Facebook remains ready and willing to meet and confer with Plaintiffs in advance of the November 4 CMC for the purpose of discussing and developing a joint case management statement to submit to the Court in advance of that hearing. But Plaintiffs' sudden demand for a Rule 26(f) conference is improper and premature. Plaintiffs have not articulated (and cannot articulate) any reason why there is a pressing urgency to meet and confer under Rule 26(f) this week, or at any time before the upcoming CMC, and the Court should reject their request.

We thank the Court for its consideration, and look forward to discussing next steps at the November 4 CMC.

Respectfully submitted,

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